

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

TWENTIETH CENTURY FOX FILM CORP., *et al.*,

Plaintiffs,

v.

MEGAUPLOAD LIMITED, *et al.*,

Defendants.

No. 1:14CV362
(LO / IDD)

ECF CASE

PLAINTIFFS' NOTICE OF POTENTIAL LOSS OF EVIDENCE

In its Order dated April 25, 2016, this Court directed the parties to this case to notify the Court immediately if they, or any one of them, “gains knowledge that any potential evidence in this case, including digital evidence currently being held by Cogent Communications, Inc., is being or might be destroyed ...” ECF Dkt. No. 52. Plaintiffs hereby submit this notice to inform the Court that Cogent Communications, Inc. (“Cogent”), by and through its General Counsel, has informed Plaintiffs’ counsel that Cogent is now unable to read the data from eight of the sixteen computer hard drives on which the data from Megaupload Limited’s “caching” servers resides. According to Cogent, the “drive heads” on those hard drives may now be frozen, which means that Cogent cannot confirm whether the data still remains on those drives without the assistance of a computer forensics expert to analyze and access the drives.

While this development does not necessarily mean that the data has been destroyed, it underscores the risk of substantial prejudice to Plaintiffs from the potential loss of this data and the need for a forensic copy of the data to made to ensure its preservation. Accordingly, Plaintiffs renew their request, as set forth in their Response to Megaupload Limited’s Motion for

a Further Extension of the Stay, dated April 14, 2016 (ECF Dkt. No. 50), that they be permitted to subpoena Cogent for the data in its possession or, alternatively, that the Court appoint an independent computer forensics vendor to verify the integrity of the data and to copy and preserve it for the benefit of the parties while this case otherwise remains stayed.

Respectfully submitted,

Dated: May 12, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2016, the foregoing was filed and served electronically by the Court's CM/ECF system upon all registered users, as well as by first-class U.S. mail, postage pre-paid, upon the following:

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